

Shriram Jhunjhunwala

Vs

The State of Bombay and Others

Civil Appeal No. 236 of 1959

(J. L. Kapur, M. Hidayatullah, J. C. Shah, K. Subha Rao, Raghuvar Dayal JJ)

04.05.1961

JUDGMENT

RAGHUBAR DAYAL, J. -

This appeal, by special leave, is against the order of the High Court of Judicature at Nagpur, dismissing the petition of the appellant under Art. 226 of the Constitution.

On August 9, 1950, the appellant applied to the State Government, Madhya Pradesh, for the grant of a prospecting licence for manganese ore over an area of 83.18 acres, comprising khasra No. 1 of mouza Seoni Bhondki. The State Government granted the prospecting licence for this area on June 18, 1951, and intimated that the prospecting licence form which was pending approval by the Union Government, would be executed in due course.

On April 21, 1951, respondent No. 3 applied for the grant of mining lease over 32 acres out of the aforesaid area of 83.18 acres. On October 20, 1951, the State Government informed him that that area had been already granted to the appellant under prospecting licence, and it was not available to him.

On November 26, 1951, respondent No. 3 applied for review to the Union Government under r. 57 of the Mineral Concession Rules, 1949.

On September 5, 1952, the Union Government wrote to the State Government that its order regarding the grant of prospecting licence to the appellant over an area of 83.18 acres should be modified to the extent that the area granted under the prospecting licence be restricted to the virgin area of 51.18 acres, as the area of 32 acres had been previously held under a mining lease by Messrs Akbar Ali Munwar Ali and had not by then been thrown open for re-grant. It was further directed by the Union Government, that area of 32 acres be thrown open for re-grant. In consequence of this direction by the Union Government, the State Government modified its order dated June 18, 1951, granting the prospecting licence to the appellant and restricted that licence to the virgin area of 51.18 acres only.

Thereafter, some time in April 1953, applications were invited for the grant of mining lease with respect to the area of 32 acres. The appellant submitted an application for the grant of the mining lease for 83.18 acres. The respondent No. 3 did not file any fresh application. On April 30, 1954, the State Government granted a mining lease for manganese ore over an area of 51.18 acres and did not grant the lease for the area of 32 acres, stating in its letter to the Deputy Commissioner that that area had been granted to respondent No. 3 under mining lease, as directed by the Union

Government, under r. 57 of the Mineral Concession Rules.

Sometime thereafter, on May 17, 1954, the appellant filed the petition under Art. 226 of the Constitution in the High Court, praying for the quashing of the order of the Union Government, respondent No. 2, granting 32 acres of area in dispute to respondent No. 3, by the issue of a writ of certiorari and also for the issue of a direction that the appellant was entitled to the mining lease in respect of that area.

The High Court dismissed this petition, holding that in order to give the relief prayed for it was essential that the order of the Union Government be quashed and, as the High Court could not reach it, it would be incongruous to direct the State Government to ignore the order of the Union Government. It is against this order that this appeal has been filed.

This appeal has no force. The prayer in the writ petition was for the quashing of the order of the Union Government granting 32 acres of area in dispute to respondent No. 3, by issue of a writ of certiorari and for the issue of a direction that the applicant was entitled to a mining lease in respect of the said area of 32 acres. The order of the Union Government could not be quashed by the High Court of Bombay, as it did not exercise territorial jurisdiction over the Union Government. The High Court could not issue the directions prayed for even if it could issue such a direction till the order of the Union Government granting the mining lease of 32 acres to respondent No. 3 was set aside.

In this view of the matter, it is unnecessary to consider the points urged for the appellant that the order of the Union Government was not an order within its jurisdiction inasmuch as it passed it without issuing notice to the appellant or affording him an opportunity to be heard on the review application filed by respondent No. 3. The question, in this form, was not raised before the High Court and if it had been raised, it would not have been within the jurisdiction of the High Court to interfere with it.

It has also been urged that the Union Government had no jurisdiction to pass the order dated April 7, 1954, under r. 57 of the Rules when, in fact, no application for review by respondent No. 3 was pending before it, as the review application filed by respondent No. 3 on November 26, 1951, had been disposed of by the Union Government on September 5, 1952. The review application, however, was not in fact finally disposed of by the letter from the Union Government to the State Government, dated September 5, 1952. That letter asked the State Government to reduce the area of the prospecting licence granted to the appellant to 51.18 acres and to throw open or re-grant the remaining area of 32 acres. The letter conveyed no order of the Union Government about the way in which the Union Government was disposing of the review application. It is clear from the several letters on record that the Union Government never treated the review proceedings before it to have been disposed of. Respondent No. 3 was informed by those letters that the matter was under consideration. It is therefore not correct to say that there was no review application pending with the Union Government on April 7, 1954, when it passed the order cancelling the orders of the State Government dated October 20, 1951, and directing the State Government to grant a mining lease for manganese ore over an area of 32 acres to respondent No. 3, provided he was otherwise eligible.

The State Government, as urged for the appellant, has the power, under the Rules, to grant the mining lease. But its granting such a lease is subject to the orders on a review by the Union Government. Its order is final, subject to the order of the Union Government. When the Union Government directed the grant of the mining lease for an area of 32 acres to respondent No. 3, the

State Government had to order such grant, in accordance with the directions of the Union Government. In fact, at that stage, the State Government only effectuates the order of the Union Government. It carries out that order which remains the final order. The contention that the effective order is ultimately of the State Government and therefore can be quashed by the High Court is not open to the appellant.

The appeal has therefore no force and is hereby dismissed with costs.

Appeal dismissed.

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